American history. I wonder if I may add a detail.

Admiral Rickover, as the Senator has said, designed and oversaw construction of the nuclear propulsion plant for the submarine Nautilus some 25 years ago. It is just now being decommissioned, having used up its lifetime as a machine. He did it with great care, great attention to detail and to methods and also to the training and supervision of the personnel involved. It worked flawlessly for a quarter of a century.

Had we followed Admiral Rickover's direction in the rest of the nuclear industry, the Nation would not find itself in the crisis of confidence with respect to nuclear technology we see throughout the country today. That may be an aspect of his career which will be even more of a guide to us. We have learned to follow him in submarines. If we had paid more attention to him in the area of nuclear power, we might be in a much better position that we are today.

Mr. PROXMIRE. Mr. President, I thank my friend from New York. He is absolutely right. Admiral Rickover's meticulous attention to detail, the absolute perfection that he insisted upon are extremely important in the use of nuclear energy and our defense effort. Certainly Admiral Rickover set a superb example. That is why it is so ridiculous that people made an example of the fact that he did accept some gifts at ship launchings, instead of looking to his example of scrupulousness in dealing with defense contractors and waste and inefficiency in the Navy and elsewhere.

I thank my friend.

SEARCH FOR NAZIS CONTINUES WITH NEW TOP TARGETS

Mr. PROXMIRE. Mr. President, the recognition of Josef Mengele's death has ended the search for the world's most wanted Nazi war criminal. But the quest for justice continues as leading Nazi hunters have chosen new top targets for their pursuits.

Among these new targets are Alois Brunner, a former deputy of Adolf Eichmann who reportedly is living in Syria, and Walter Kutschmann, a former gestapo leader seen recently in Argentina.

The long and fruitless search for Mengele demonstrates the difficulty of bringing war criminals to justice without a concerted and coordinated international effort.

Many of the Nazi hunters believe that government collaboration prevented them from tracking down Mengele. They claimed that it was only their constant pressure that finally resolved the Mengele case.

Simon Wiesenthal, head of the documentation center that tracks down Nazi war criminals, feels that the Nazi hunters may have been supplied with deliberate disinformation in some instances to interfere with their efforts.

Rabbi Marvin Hier, dean of the Simon Wiesenthal Center for Holocaust Studies, attacked the indifference of governments to the quest to bring the Nazi fugitives to justice. Rabbi Hier said in a June 26 New York Times article, "it just shows you that without resources of major intelligence agencies and governments involved, that's what happens."

Hier denounced the effort of the West German Government as "just public relations" and added that "America and Israel just weren't interested."

Mr. Wiesenthal was obviously disappointed to find out that Mengele had been living in Brazil rather than in Paraguay, which had been the locus of the Nazi hunters' search for Mengele over the last 20 years. Wiesenthal, however, stressed in the same New York Times article that "The Mengele case is only one of many cases. For the people who followed only one case, they should be embarrassed."

Wiesenthal, rather, pointed out the discoveries that his organization did make. Wiesenthal, for example, helped to bring to justice two major war criminals from the Sao Paulo area other than Mengele. These two were Franz Stangl, the former commandant of the Treblinka death camp, and Gustav Franz Wagner, the former deputy commandant of the Sobibor death camp.

Stangl was extradited to West Germany in 1967 and died 3 years later while serving a life sentence. Wagner died amid extradition proceedings in 1980.

Wiesenthal said that along with Dr. Mengele, these two Nazis found in Sao Paulo accounted for the deaths of nearly 1.7 million persons in the Holocaust.

Wiesenthal reported that as far back as 1963, he had learned of contacts between Dr. Mengele in South America and Hans Sedlmeier, manager of the Mengele family factory in Gunzburg, West Germany. Wiesenthal passed this information to the prosecutor's office in Frankfurt, but nothing came of it. Wiesenthal remarked to the Times in frustration, "When the prosecutor is not observing Sedlmeier, it's not my guilt."

Mr. President, the failure of governments around the world to help the Nazi hunters' efforts has been extremely frustrating.

A spokesman for the West German Embassy could not answer a reporter's question of why the authorities had not searched the Sedlmeier house or monitored the mail of the Mengele family in Germany. The Israelis, it turns out, came closest to capturing Mengele, barely missing him when they caputred Adolf Eichmann in Buenos Aires in 1960.

The failure of a united world effort to bring Nazi war criminals to justice highlights the need for an international legal agreement committed to enforcing justice against those perpetrating crimes of genocide.

The addition of the United States to the list of nations ratifying the Genocide Convention would greatly enhance the ability of the world community to battle those guilty of genocidal crimes.

RECOGNITION OF SENATOR MOYNIHAN

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from New York [Mr. MOYNIHAN] is recognized for not to exceed 30 minutes.

Mr. MOYNIHAN. I thank the distinguished Presiding Officer.

TERRORISM AND INTERNATIONAL LAW

Mr. MOYNIHAN. Mr. President, I should like to speak this morning at some length, asking the indulgence of the Senate in that regard, to the question of terrorism and international law—a subject which has been addressed by the President this week and which, in the aftermath of the hijacking of the American TWA plane and the murder of an American naval diver in the course of that hijacking, is one of increasing attention at very specific operational levels in the Department of State and the Department of Justice.

That the issue of terrorism should raise question of international law seems obvious. Yet, in the way it emerges this week in our city, it seems to me once more to illustrate the difficulties which our Nation and our Government in particular—and not just this administration, but our Government—continues to have with the question of adherence to international legal standards as a principle of American policy.

International law as a foundation of U.S. foreign policies is to be associated with the history of American involvement in the world. Just a few days ago, we marked the 75th anniversary of the occasion on which Secretary of State Knox proposed, for example, that the United States lead the world in committing ourselves to the arbitration of disputes that might arise in international arenas as a way to avoid violence and the general establishment of a regime of litigation and adjudication, in place of an international order in which disputes be settled only through resort to force.

In the course of the late seventies, I had occasion to offer comments on what seemed to me then to be a retreat from an earlier understanding on our Nation's part that international law, embodied in part in international conventions, would be central to our view of state conduct in world affairs. Where once we thought international law would guide us in these matters, we seemed to have embarked on a re-

treat from that conviction—a retreat which I would say was not accompanied by any very consistent realization that we were in fact changing our minds. That is, we have abandoned international law not because we devised a better guide to how nations should conduct themselves in the world, but apparently because we have forgotten that we ever did believe in law.

I would ask the simple question: If we no longer believe what we clearly once did believe, then what do we believe?

The occasion arose in a very specific setting in 1979 when our Embassy and two consulates were seized in Iran, and the U.S. Government took all manner of measures—many sensible, good, and internally defensible and certainly intelligent. The one thing that never occurred to the American Government in that crisis, however, was to take the matter to the International Court of Justice as a clear violation of the most elemental of tenets of international law, which is the inviolability of diplomatic envoys. International law practically begins with that proposition.

I came to the floor then, in November 1979, and spoke to this matter, and I understand that it was in some measure a response to questions and suggestions which I raised then that, indeed, very shortly thereafter the U.S. Government did go to the World Court. In very short order the World Court responded to our address by issuing a unanimous decision establishing the proposition that the United States was in the right in protesting Iran's actions, citing clear evidence that the law had been violated by the Government of Iran. An interim order said no party was to do anything that would worsen the position on the ground and that a final decision would be handed down in due time. The ruling was handed down by vote of 14 to 1, the Soviet judge only dissenting. The Government of Iran was declared to [illegible] that judgment [illegible] action to [illegible] fense, as [illegible] the right to [illegible] act under the auspices of a court adjudication to that effect.

Well, that time, and that episode, passed and yet the issue did not. Violations of international law recurred into the 1980's. In December 1983, I spoke in a symposium at the Graduate Center of the City University of New York on the subject of terrorism and international law. This was, Mr. President, shortly after a terrorist bomb had exploded just 30 feet from where I speak today and at an hour which, had we been in session as had been expected, would have decimated the ranks, if I may say, of the Republican cloakroom, a crime that has to this day not been resolved.

I spoke at that time of the question of whether law provided a basis for our response to terrorism and our claim on other nations to join in that response, a claim which would be made not necessarily to side with the United States, shall we say, on any particular issue but, rather, to side with international standards of law. The point is that this latter is much more readily managed by some governments than simply taking a side with the United States or a particular nation. In December 1983, I asked:

Is it possible that in a world where international law is increasingly thought to be irrelevant, or at least is so treated by those who conduct U.S. foreign policy, terrorism will flourish?

Could it be that the inattentiveness of the West, and of the United States in particular, to considerations of law has contributed to an international climate that allows other states to believe that we will not hold them accountable to standards of civilized and peaceable behavior such as might be embodied in a tradition of international law?

On March 23, 1984, the New York Times in an editorial reiterated this question, and responded:

The honest answer is, yes, it could.

That brings me to the President's address early this week, on July 8, 1985, to the American Bar Association's annual meeting here in Washington. The President gave a fine address, one with which I would certainly like to be associated, and I cannot but suppose that this would be the wish of every Member of the Senate.

He invoked international law in the fight against international terrorism. He specified five states in particular as, in his words, "outlaw states" which refuse to abide by the standards of [illegible] behavior and legal [illegible] long since established in the world.

He recalled that the earliest [illegible] ance of the United States in international affairs, save in its defensive actions in the British and French wars in the 1790's, the first initiative the United States can be said to have taken in foreign affairs, was to help suppress piracy in the Mediterranean—a matter, an obstinate [illegible] ingly intractable violation of international law. There were many [illegible] of American ships seized, American warships grounded, American [illegible] imprisoned and enslaved, and [illegible] not a small matter. At [illegible] the United States engaged [illegible] this matter—and to this day the U.S. Marine Corps hymn recalls the Marines mission "to the shores of Tripoli." We did persist, and in time the piracy disappeared from the Mediterranean—and a measure of international order was established.

I might note that piracy has reappeared in the China Sea in [illegible]. Like any issue of law enforcement, [illegible] never goes away.

The President said of that time, some 180 years ago, about the international response, "We acted together to rid the seas of piracy at the turn of the last century," and he [illegible] for international cooperation [illegible] to combat terrorists and their patrons.

President Reagan asked that this be done—

B[illegible] of us in the community of civilized nations. We must act against the criminal menace of terrorism with the full weight of the law—both domestic and international. We will act to indict, apprehend, and prosecute those who commit the kind of atrocities the world has witnessed in recent weeks.

He said that, and he was right to do it, and he was right to declare adherence to a standard that, once raised, other nations in the world can equally repair to—the standard of law.

In this vein, it was reported that the officials of the Department of State and the Justice Department are now preparing the legal groundwork for apprehending and prosecuting those individuals who are thought to be responsible for having hijacked TWA flight 847.

Two Federal statutes are involved here: The Antihijacking Act of 1974 and the Aircraft Sabotage Act of 1984. As TWA flight 847 is an American flag vessel, U.S. law is applicable.

However, more important, there are treaties involved, international conventions drawn up for the purpose of establishing global standards of national conduct—standards which would wholly condemn the behavior of the hijackers and which would require action by the State of Lebanon, and any other state involved, to bring them to justice and, indeed, would raise the question of whether the conduct of those states ought not be the subject of some retaliation.

There are three such treaties. The first is the [illegible] Tokyo convention on "Offenses and Certain Other Acts Committed on Board Aircraft." This treaty established, among other things, that acts which may or do jeopardize the safety of aircraft or persons or property therein shall be treated, for the purpose of extradition, as if they had been committed not only in the states in which they occurred, but also in the territory of [illegible] of the aircraft, which is an important statement of extradition, of responsibilities by states which might be hosts to terrorists and be sponsors of terrorism, as the President described the five outlaw states in his speech to the ABA.

Another is the 1970 Hague convention on "Supression of Unlawful Seizure of Aircraft," which obligates all signatory states, without exception, either to prosecute or to extradite terrorists to the requesting states.

The 1971 Montreal convention on "Suppression of Unlawful Acts Against the Safety of Civil Aviation" is directed more specifically against sabotage, such as may have occurred in the two recent events with Air India, and establishes a basis for extradition between the contracting parties.

So the administration proceeds as it should, and as we wish it would, appealing to nations to abide by stand-

ards they have established voluntarily and collectively, in a tradition that goes back centuries. As in the matter of combatting piracy, these standards are based on respect for law.

The Supreme Court, itself, has said, in Pacquette Habana, handed down in 1900, that "international law is part of of our law * * *"

Mr. President, it is in that context that I unhappily take note of a seeming wholly contradictory or opposed tendency in American policy which was also exhibited this week, on the very day the President delivered his address to the ABA—a fine and appropriate address, as I have said. At the time of the President's address, in which he appealed to the standards of international law and asked the world to repair to that standard, officials of the Department of State were asking the ABA not to consider a resolution urging American attachment to those very standards.

Mr. Stuart Taylor, in the New York Times, reported that Reagan administration officials had in recent days persuaded the American Bar Association to remove from its agenda three resolutions regarding foreign affairs. One such resolved:

That the American Bar Association reiterates its longstanding support for the U.S. participation in the International Court of Justice and strongly urges that the United States take steps to strengthen and not diminish its acceptance of the jurisdiction of the International Court of Justice.

This resolution, which had been proposed to the house of delegates of the ABA jointly by their standing committee on world order under law and the section on individual rights and responsibilities, would have been voted on today at the annual meeting, along with one regarding the manner in which visas are granted to foreign visitors to the United States, and another urging the United States to negotiate a treaty with the U.S.S.R. regarding the first use of nuclear weapons.

The first resolution addressed the announcement by the U.S. Government on January 18 that it would not participate further in a proceeding at the World Court that had been brought by Nicaragua against the United States.

The American Society of International Law had earlier expressed its concern about this matter in a 1984 political resolution, only the second such in its almost century long history, which deplored the American efforts to withdraw from the jurisdiction of the court in clear violation of the terms set down on this floor—on this floor—when we accepted the jurisdiction in 1946.

Indeed, it was the president of the American Bar Association, Mr. John C. Shepherd, who said on January 28 that he was

Troubled by the decision to withdraw our participation in the dispute with Nicaragua before the International Court of Justice. . . . One of the major goals of the American Bar Association is to advance the rule of law in the world. Since 1947, the ABA has consistently advocated referral of all international legal questions or disputes which cannot be settled by direct negotiations to the International Court of Justice or to arbitral tribunals to assure third-party determination.

Nevertheless, a decision to withdraw the resolution from consideration at this week's meeting was taken at the request of the administration, and after, apparently, a briefing of bar association officials with the State Department and the National Security accounts tribunal.

I must say, Mr. President, that I was surprised by this and disappointed that the bar association would agree not to consider a proposed resolution urging the United States to participate in the principal forum for the consideration of international—at the very time the President is insisting that international law be upheld and enforced and pursued!

For international law does not simply bind us. It authorizes us to act in defense of our interests: Adherence to law is not a form of renounciation of force. It is a form of the legalizing of force, where force is necessary to uphold the law.

The idea that we could at one and the same time ask that international law be upheld and persuade the bar association not to pass a resolution asking that we abide by our own commitments to the court is a contradiction this administration will have to address and resolve.

According to the press accounts, officials of the State Department had said that for the bar association to express an attachment to the jurisdiction of the court would be, I quote the New York Times:

The ABA was told that to express support for the institution of the World Court is in effect to endorse Nicaragua's allegations against the United States.

Mr. President, that is a statement which I happen to know was in fact made and which is appalling.

Would it be the case, sir, that if anyone were to express support for the authority of the Supreme Court, across the street from the Senate here, that that implied that one had taken a position on a particular case pending before the Supreme Court? Of course it does not. The matters are so clearly distinguished. It is indeed a first principle of the bar that all plaintiffs, all defendants, are entitled to defense and attorneys; officers of the Court will defend them and their defense in no way involves their personal commitment to or concurrence with a proposition advocated by one of the parties to the case, whether ideological, political, or otherwise. Their commitment is to the law and process of the law and the authority of the Court.

But that is exactly what the Department of State said to the bar association, that is, that the ABA should not reaffirm so basic a principle.

Mr. President, I am disappointed at this. I recognize there are difficulties with the present Court. I recognize, on the other hand, that there has emerged a practice of creating special chambers as possible ways around some of those difficulties.

It happens not long ago I addressed a meeting of the bar association on this very matter, and I will ask that I might include that address in my remarks here today.

It was, I thought, well received by the group of thoughtful and concerned members of the association, the American Bar Association Conference on Restoring Bipartisanship in Foreign Affairs.

Mr. President, I wish to close with the thought that Americans need to come together in these matters, and we need to let the world know that not only are we serious but we are consistent. We who helped suppress piracy in the Mediterranean in the age of the sail two centuries ago are just as concerned with piracy in the Mediterranean in the age of the jumbo jet. We have a tradition of abiding by law and of helping to enforce the law, and it applies to us as well as to others, and we do not fear that.

Yet with regard to Nicaragua's present case in the World Court, we somehow seem to dread meeting the Nicaraguans in court. I would have thought we would have much to talk about in court where it concerns the behavior of the Sandinista regime in Central America. The President on Monday labeled the Sandinista government in Managua an outlaw regime. What is an outlaw regime? It is a regime that violates international law.

If we believe it to be an outlaw regime why are we not willing to go to court and say why and give facts, numbers and dates. What has come over us? Have we no attorneys who can face the Nicaraguans at The Hague? Have we no case? Of course, we have a case.

The President was not wrong to describe the Nicaraguans as an outlaw nation. Their involvement in the internal affairs of El Salvador was flagrant and wrong. And 3 years running I came to the floor of this Senate as vice chairman of the Senate Select Committee on Intelligence and proposed the authorization of funds to support activities against the Nicaraguan Government—on the grounds stated here at this desk in this Senate—that the Nicaraguan Government was in flagrant violation of international law. And on that basis these funds were unanimously adopted and provided, 3 years running.

It was law that was the basis of our action then, and law should be the basis of our action now. Had it continued to be, there would not have been the great divisions that have developed in the Senate and Congress itself from the administration.

Mr. President, this is not a small subject. We are frittering away a two-century-old tradition. The President spoke well about it on Monday. I could wish that his own administration would have acted in the spirit in which he spoke. I hope this may yet be the case.

The world did not stop on Monday or Tuesday, and I hope that the contradictions in our behavior and in our policies will be better understood—at least to the degree that the current inconsistencies limit our possibilities and impede any progress we make in the matter of dealing with terrorism.

Mr. President, I have a number of texts with respect to the remarks I have made which I ask unanimous consent to have printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

[From the New York Times, July 9, 1985]

EXCERPTS FROM PRESIDENT REAGAN'S ADDRESS

WASHINGTON, July 8—Following are excerpts from President Reagan's address today to the American Bar Association, as distributed by the White House:

My purpose today goes even beyond our concern over the recent outrages in Beirut, El Salvador—or the Air-India tragedy, the Narita bombing or the Jordanian Airlines hijacking. We must look beyond these events because I feel it is vital not to allow them, as terrible as they are, to obscure an even larger and darker terrorist menace.

There is a temptation to see the terrorist act as simply as erratic work of a small group of fanatics. We make this mistake at great peril; for the attacks on America, her citizens, her allies and other democratic nations in recent years do form a pattern of terrorism that has strategic implications and political goals. And only by moving our focus from the tactical to the strategic perspective, only by identifying the pattern of terror and those behind it, can we hope to put into force a strategy to deal with it.

* * * * *

I submit to you that the growth in terrorism in recent years results from the increasing involvement of these states in terrorism in every region of the world. This is terrorism that is part of a pattern—the work of a confederation of terrorist states.

Most of the terrorists who are kidnapping and murdering American citizens and attacking American installations are being trained, financed and directly or indirectly controlled by a core group of radical and totalitarian governments, a new, international version of Murder Inc.—and all of these states are united by one simple, criminal phenomenon—their fanatical hatred of the United States, our people, our way of life, our international stature.

And the strategic purpose behind the terrorism sponsored by these outlaw states is clear: to disorient the United States, to disrupt or alter our foreign policy, to sow discord between ourselves and our allies, to frighten friendly third world nations working with us for peaceful settlements of regional conflicts and, finally, to remove American influence from those areas of the world where we are working to bring stable and democratic government.

In short, to cause us to retreat, retrench, to become "Fortress America." Yes, their real goal is to expel America from the world.

That is the real reason these terrorist nations are arming, training, and supporting attacks against this nation. And that is why we can be clear on one point: these terrorist states are now engaged in acts of war against the Government and people of the United States. And under international law, any state which is the victim of acts of war has the right to defend itself.

The American people are not—I repeat, not—going to tolerate intimidation, terror and outright acts of war against this nation and its people. And we are especially not going to tolerate these attacks from outlaw states run by the strangest collection of misfits, Looney Tunes and squalid criminals since the advent of the Third Reich.

* * * * *

Now much needs to be done by all of us in the community of civilized nations. We must act against the criminal menace of terrorism with the full weight of the law—both domestic and international. We will act to indict, apprehend and prosecute those who commit the kind of artocities the world has witnessed in recent weeks.

We can act together as free peoples who wish not to see our citizens kidnapped, or shot, or blown out of the skies—just as we acted together to rid the seas of piracy at the turn of the last century." There can be no place on Earth left where it is safe for these monsters to rest, or train, or practice their cruel and deadly skills. We must act together, or unilaterally if necessary, to ensure that terrorists have no sanctuary—anywhere.

[From the New York Times, July 9, 1985]

LAWYERS FOR U.S. LAY PLANS FOR HUNTING BEIRUT HIJACKERS

(By Stuart Taylor, Jr.)

WASHINGTON, July 8—Justice and State Department lawyers are preparing the legal groundwork for criminally charging and seeking extradition of the two hijackers who killed an American hostage in Beirut, Lebanon, last month, Administration sources said today.

Officials refused to comment on their plans, and it was not clear today whether a definite decision had been made to bring criminal charges or to offer a reward for information leading to the arrest of the hijackers and any accomplices.

Asked whether criminal charges were being prepared against the hijackers, Terry H. Eastland, a Justice Department spokesman, said today, "No, that's one of the things down the road, but we don't have anything in sight in the near future."

Other officials pointed out that the Government could keep secret any criminal charges and moves to apprehend the hijackers lest the publicity prompt them to flee Beirut, where they were last seen, or go into hiding.

President Reagan said today that "we will act to indict, apprehend, and prosecute those who commit the kind of atrocities the world has witnessed in recent weeks." He did not suggest a timetable or name any specific cases in which indictments should be brought.

Administration lawyers have said the most likely course would be to bring criminal charges against the hijackers and accomplices as a basis for asking Lebanon to extradite them, as provided in an antihijacking convention.

A State Department spokesman said last week that unspecified actions could be carried out if Lebanon was unable or unwilling to comply with an extradition request.

Secretary of State Gorge P. Shultz said last week that the F.B.I. has identified the two hijackers, and law enforcement officials confirmed that today. Some State Department officials expressed skepticism about whether the Government knows their identities.

Government lawyers have [illegible] ing among other things, the [illegible] tions of possible actions including [illegible] a reward and sending agents to Beirut to arrest the hijackers.

A grand jury indictment would be one way in which charges could be brought. An arrest warrant issued by a Federal judge or magistrate could also serve as the basis for an extradition request, legal experts said. Grand jury indictments, arrest warrants and extradition requests could all be processed secretly, they noted.

The hijackers could be charged under a 1974 Federal law that makes hijacking a Federal crime. The law provides the death penalty or life imprisonment for hijackers who kill a hostage, and authorizes Federal prosecution of crimes including murder, robbery and theft that are committed on hijacked American aircraft overseas.

A new law enacted last year also provides a maximum penalty of life imprisonment for taking Americans hostage anywhere in the world.

[From the New York Times, July 9, 1985]

BAR ASSOCIATION DROPS 3 PROPOSALS URGING U.S. FOREIGN POLICY MOVES

WASHINGTON, July 7—Three resolutions pending before the American Bar Association's House of Delegates concerning American foreign policy have been removed from the agenda.

The deleted motions urged the Government to reduce restrictions on visas for foreign citizens and on travel abroad by United States citizens, to express support for the International Court of Justice, and to begin negotiations with the Soviet Union aimed at a treaty to prohibit first use of nuclear weapons.

The resolutions would have been voted upon this week at the bar association's annual meeting. The decision to withdraw them came a few days after officials of the State Department and the National Security Council held a private briefing for the association's Board of Governors, primarily devoted to the problem of international terrorism. At that meeting or shortly afterward, Government officials reiterated opposiiton to each of the proposed resolutions.

ADMINISTRATION PRESSURE DENIED

But sponsors of the resolutions said they were dropped for tactical reasons, not because of any direct pressure from the Reagan Administration.

On Saturday, the association's section on individual rights and responsibilities withdrew its motion urging Congress to reduce the Government's power to deny visas to foreign nationals solely on the basis of their political beliefs or associations, and to ease passport regulations for Americans.

The State Department has opposed changes in the visa law, contending that any change in the law would hamper efforts to keep out terrorists.

Philip A. Lacovara of the individual rights section called such fears "unjustifed" but said they helped persuade the group to postpone consideration of the proposal until the bar association's next meeting, in February 1986.

"The invocation at the meeting of the terrorist specter only two weeks after the Beirut hijacking made this the kind of issue we didn't think should come before the House of Delegates," Mr. Lacovara said.

The individual rights section was cosponsor or a proposal calling on the United States to reiterate its "long-standing sup-

port" for the International Court of Justice and to take steps to "strengthen and not diminish" American acceptance of its jurisdiction.

Earlier this year, President Reagan announced that the United States would no longer participate in proceedings brought against it at the World Court by the Government of Nicaragua . . . the State Department's lawyer, told the gathering that for the bar association to express its support for the Court would be read as implicit endorsement of Nicaragua's case, which charges that the American mining of Nicaragua's water violated international law.

The bar group has supported the World Court since it's establishment in 1946, and sponsors of the resolution said it was withdrawn because it was viewed as redundant.

A third resolution urging the United States and the Soviet Union to begin negotiations aimed at a treaty prohibiting the first use of nuclear weapons was withdrawn, its sponsors said, because they felt it was unlikely to pass. . . .

AMERICAN BAR ASSOCIATION—STANDING COMMITTEE ON WORLD ORDER UNDER LAW AND SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES—REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

Be it resolved, that the American Bar Association reiterates its long-standing support for the United States' participation in the International Court of Justice and strongly urges that the United States take steps to strengthen and not diminish its acceptance of the jurisdiction of the International Court of Justice.

REPORT

On January 18, 1985 the United States Department of State issued a statement announcing a decision by the President not to participate in further proceedings in the case brought by Nicaragua in the International Court of Justice.[1] The accompanying Announcement noted that "Last November 26, the Court determined that it has jurisdiction over Nicaragua's claims and will now proceed to a full hearing. We believe this decision was clearly erroneous". In the formal notification to the Court of the U.S. withdrawal transmitted by telegram on the same day,[2] the Legal Adviser of the Department referred to the United States' careful consideration of the Court's judgment "on the questions of the jurisdiction of the Court to entertain the dispute and of the admissibility of Nicaragua's application" and stated that:

"On the basis of that examination, the United States is constrained to conclude that the judgment of the Court was clearly and manifestly erroneous as to both fact and law. The United States remains firmly of the view, for the reasons given in its written and oral pleadings, that the Court is without jurisdiction to entertain the dispute, and that the Nicaraguan application of 9 April 1984 is inadmissible. Accordingly, it is my duty to inform you that the United States intends not to participate in any further proceedings in connection with this case, and reserves its rights in respect of any decision by the Court regarding Nicaragua's claims."

The Department Statement indicates that the reason for the decision to withdraw from the case was the Administration's conviction that the Court's decision, "a marked departure from its past, cautious approach to jurisdictional questions", and the unusual haste with which it was reached, showed that "the Court is determined to find in favor of Nicaragua" on the merits.

Further, as a result of these developments, the statement declared, the United States found itself compelled to clarify its acceptance of the Court's compulsory jurisdiction "in order to make explicit . . . that cases of this nature[3] are not proper for adjudication by the Court". While the precise result of this "clarification" is not yet determined, it is clear that a major change in the United States' acceptance of the compulsory jurisdiction of the Court is contemplated.[4] The statement implies that a reservation excepting cases involving ongoing armed hostilities may be one of the changes under review; others may include removal of the 6-months notice for termination requirement in the Declaration.

In addition to the effect on United States actions in relation to this particular case, the statement also expressed concern about the long-term implications for the Court itself of the Court's decision. The statement deplored what it described as the increasing politicization of international organizations against the interests of the Western democracies in the last decade, and expressed the hope that these trends would not affect the Court, "because a politicized Court would mean the end of the Court as a serious, respected institution. Such a result would do grievous harm to the rule of law".

The statement concluded:

"We will continue to support the International Court of Justice where it acts within its competence—as, for example, where specific disputes are brought before it by special agreements of the parties [citing the recent U.S.-Canada Gulf of Maine maritime boundary case.] Nonetheless, because of our commitment to the rule of law, we must declare our firm conviction that the course on which the Court may now be embarked could do enormous harm to it as an institution and to the cause of international law."

It is the contention of the sponsors of this resolution that the decision to withdraw from the case in itself does great harm to the Court, to the principle of international adjudication and peaceful settlement of disputes, and to the rule of law, and adversely affects the international standing and reputation of the United States as a long-standing supporter of the Court and of these principles. As pointed out by a prominent international legal scholar,[5] with this decision "the U.S. Government turned its back not only on the International Court of Justice but on 40 years of leadership in the cause of world peace through law." Another international lawyer of distinction, while expressing his opinion that the State Department "was given strong provocation for its unprecedented action" by the Court's "preposterous" reasoning in finding that Nicaragua had accepted its compulsory jurisdiction, notes that "[N]evertheless, this action is fraught with possibilities for undermining the authority of the Court and the progressive unraveling of the commitment to international adjudication."[6]

These concerns were eloquently stated by ABA President John C. Shepherd on January 28, 1985:

"I am troubled by the decision to withdraw our participation in the dispute with Nicaragua before the International Court of Justice and by what the decision might mean for the future of the Court. One of the major goals of the American Bar Association is to advance the rule of law in the world. Since 1947 the ABA has consistently advocated referral of all international legal questions or disputes which cannot be settled by direct negotiations to the International Court of Justice or to arbitral tribunals to assure third party determination."

The sponsors of this resolution recommend that the American Bar Association reiterate its long-standing support for the United States' participation in the International Court of Justice and strongly urge that the United States take steps to strengthen and not diminish its acceptance of the jurisdiction of the Court.

The American Bar Association has consistently supported the International Court, the principle of international adjudication and the rule of law. In December 1945 the House of Delegates unanimously passed a resolution urging the President and the Senate to take action "at the earliest practicable time" to accept the compulsory jurisdiction of the Court. In 1947, reaffirmed in 1980 and 1973, the House passed a resolution urging elimination of the Connally reservation to the U.S. Declaration of acceptance of the compulsory jurisdiction (the reservation excepts from the jurisdiction of the Court matters within the domestic jurisdiction of the United States as determined by the United States), on the grounds that it undermines the United States' adherence to the Court's jurisdiction. In February 1980 the House adopted a resolution expressing the ABA's full support for the United States' claim in the Iranian Hostages case, and for the ICJ decision ordering the re-

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[1] January 18, 1985, Dept. of State File No. P85 0009-2151, reproduced in 79 Am. Jnl. Int'l L., No. 2, April 1985, pp. 438.

[2] *Id.*, at 439.

[3] The United States argued that this case involved issues of collective self defense, the use of force, and ongoing armed conflict, issues which, according to the State Department, under the United Nations Charter were within the exclusive competence of the Security Council. It should be noted that the Court rejected this argument, pointing out that Article 24 of the Charter conferred primary, not exclusive, responsibility on the Council for the maintenance of international peace and security.

[4] The United States' Declaration of August 26, 1946 accepting the compulsory jurisdiction of the Court is as follows:

I, Harry S. Truman, President of the United States of America, declare on behalf of the United States of America, under Article 36, paragraph 2, of the Statute of the International Court of Justice, and in accordance with the Resolution of 2 August 1946 of the Senate of the United States of America (two-thirds of the Senators present concurring therein), that the United States of America recognises as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising concerning—

(a) the interpretation of a treaty;

(b) any question of international law;

(c) the existence of any fact which, if established, would constitute a breach of an international obligation;

(d) the nature or extent of the reparation to be made for the breach of an international obligation;

Provided, that this declaration shall not apply to—

(a) disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future; or

(b) disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America; or

(c) disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States of America specially agrees to jurisdiction; and

Provided further, that this declaration shall remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate this declaration.

[5] Thomas M. Franck, Editorial Comment, 79 Am. Jnl Int'l L. (2), April 1985, p. 375.

[6] Monroe Leigh, Commentary on Judicial Decisions, *Id.*, p. 442 at 446.

lease of the hostages. In February 1982 the House adopted a resolution in favor of expanding the advisory jurisdiction of the Court by allowing national courts to refer international law questions to the Court for an advisory opinion. As recently as March 1984, then President Wallace Riley wrote to the presidents of the bar associations of 33 countries which have accepted the compulsory jurisdiction of the ICJ urging similar action in supporting the Court's advisory jurisdiction.

Moreover, in August 1983 the Association adopted Goal VIII, committing the ABA to action to advance the rule of law in the world, and to provide leadership for the development of the rule of law in dispute avoidance and the resolution of conflict between nations.

President Shepherd's statement of January 28, 1985 is a further unequivocal expression of the Association's support for the Court and international adjudication. It is therefore particularly appropriate and important that the Association reiterate its support for the United States' participation in the Court at this time.

It is of particular importance that the United States not allow its perception of the Court's bias in favor of Nicaragua [7] to impel a hasty and ill-conceived radical restructuring of its acceptance of the compulsory jurisdiction of the Court, which may be against the nation's long term interest. Certain changes in the Declaration have strong arguments in their favor: the six-months notice of termination provision, for example, can put the United States at an unfair disadvantage viz-a-viz another state whose declaration contains no notice period. Nevertheless, the United States has firmly supported the International Court of Justice since its establishment, and was among the first States to declare its acceptance of the compulsory jurisdiction of the Court, in 1946. Most recently, the U.S. submitted its maritime boundary dispute with Canada in the Gulf of Maine area to a panel of the Court by special agreement and the matter was successfully resolved. Even more significantly, the Court overwhelmingly supported the United States case against Iran in the *Hostages Case* of 1980 (the only exception being the Soviet judge) and ordered the release of the hostages and reparations; the U.S.-Iran Claims Tribunal was established as a result. The latter case is particularly interesting because Iran attempted to deny the jurisdiction of the Court on the grounds that the dispute was but one aspect of the whole complex of social, economic, cultural and political relations between the two countries over 25 years and could not be adjudicated independently from them. The Court dismissed this argument, noting that there was no reason why, "because a legal dispute submitted to the Court is only one aspect of a political dispute, the Court should decline to resolve for the parties the legal questions at issue between them."

One of the options being discussed is confining United States participation in the Court to cases submitted by special agreement only: in other words, withdrawing from acceptance of the Court's compulsory jurisdiction. Such a course would be a serious retrograde step, undermining the principle of international adjudication as well as the authority of the Court. A comment made by the Senate Foreign Relations Committee in its 1946 Report on the Declaration accepting the compulsory jurisdiction of the Court is of continuing, and even more compelling, relevance today:

"The ultimate purpose of the resolution is to lead to general worldwide acceptance of the jurisdiction of the International Court of Justice in legal cases. The accomplishment of this result would, in a substantial sense, place international relations on a legal bases, in contrast to the present situation, in which states may be their own judge of the law."

Rather than diminishing its acceptance of the jurisdiction of the Court by participating only by special agreement, it is suggested that the United States could increase its support of the Court while making those adjustments to its Declaration as are considered reasonable and necessary at the present time. For example, many treaties to which the United States is a party contain provisions for the referral of disputes arising from the treaty to the ICJ for resolution. The United States could increase the Court's jurisdiction by ensuring that existing treaties' provisions are adhered to, and including similar provisions in future international agreements.

The argument is made that one of the original purposes of the United States' acceptance of the compulsory jurisdiction was to "set a good example" to other States, and that purpose has evidently failed since the United States is one of only 44 of the 159 United Nations member States to have accepted the compulsory jurisdiction at all, and most acceptances are hedged with reservations. However, as pointed out by Mr. Franck,

"The United States does not adhere to the Court primarily to 'set a good example', but, rather, because, as a richly endowed but not ominpotent member of the international community, it tends—as a matter both of principle and of self-interest—to conduct itself in accordance with those neutral reciprocal principles to which it has voluntarily committed itself. When others fail to live up to those commitments, it is useful to be able to demonstrate this, credibly, in open court.". [8]

Respectfully submitted,

ROBERT F. DRINAN,
Chairperson, Standing Committee on World Order Under Law.
J. DAVID ELLWANGER,
Chairperson, Section of Individual Rights and Responsibilities.

THE ROLE OF INTERNATIONAL LAW IN RESTORING BIPARTISANSHIP IN FOREIGN AFFAIRS

(An Address by Senator Daniel Patrick Moynihan)

I propose the thesis that adherence to the idea of international law as the foundation of foreign policy was in turn the basis for bipartisanship in foreign policy.

The idea is simple enough, and I think there is at least a reasonable match with experience. When policies, especially those requiring the use of force, are seen to be based on rights and responsibilities under international law, an opposing party can support the policy without necessarily supporting its proponents. This is the first principle of civil order, and the international analogy is valid, or so it appears to me.

From the late 1970's I have been suggesting that the erosion of our commitment to international law, at times even our awareness of it, was making foreign policy ever more problematic, even erratic. I believe we can see this today with respect to Central America.

Lest what I say appear partisan itself, may I repeat that this is an impression that formed some time ago, during the previous administration, and has only strengthened with time.

The bipartisanship we recall with nostalgia, and whose disappearance we seemingly regret, emerged from the debris of World War II, an extension of wartime arrangements. More precisely, bipartisanship was the result of a judgment made—by President Roosevelt—that the failure of President Wilson to pursue such arrangements after World War I had been calamitous. Failure to pursue bipartisanship at home had made it impossible to arrange international order abroad.

In 1919 Woodrow Wilson, a Democrat, had brought a package of treaties back to Washington, where they were submitted to a Republican-controlled Senate. The Senate said no. Wilson was so convinced that his League of Nations scheme was the correct one, (and that only lack of awareness among the people and mean-spiritedness in the Capital caused the Senate to balk) that he went directly to the people, travelling the country by rail until the effort brought him to physical collapse. And to no avail.

The United States thereupon entered the postwar world quite outside the institutions we ourselves had helped to contrive in order to preserve principles of international law—the violation of which (by the Central Powers) had been the grounds on which we had entered that war in the first place.

Twenty-five years later, in the aftermath of a second war which many thought had been brought about by the earlier failure of the U.S. to join in the management of the international order, Franklin D. Roosevelt (who had been in Wilson's subcabinet, as Assistant Secretary of the Navy) undertook to avoid Wilson's mistake. He set out to construct an international order almost identical to that which Wilson had envisioned: an international assembly, with special provisions for great powers; an international court; specialized agencies (for health, labor, education . . .). Like Wilson, what FDR envisioned, and what many of us who came of age at the end of the war expected, was the emergence of a world resembling nothing so much as the United States enlarged.

But he did one wholly different thing: Roosevelt saw to it that Republican legislators were involved in the planning and negotiation, and that the U.N. Charter was presented to the Senate as a bipartisan expression of an American commitment to the rule of law in international affairs.

The American leaders of 1944, '45, '46 attempted a world order of extraordinary sweep, with systems in place for the orderly conduct of world trade and finance, and for democratization (which in those days meant decolonialization). The use of force would assume a collective aspect. And all these arrangements would derive their authority from a great charter that began: "We, the Peoples of the United Nations . . ."

Our own Constitution, of course, begins, "We the people of the United States . . ."

The Charter was not the only document on which world order would rest. It was a statement of contractual law—voluntarily entered into by those countries that desired so to do—derived from a larger common law: international law. (The parallels with the American system recur.) The connection between law and organization is demonstrated by the cover of the standard edition of the Charter distributed by the Office of Public Information of the U.N. The document is titled: "Charter of the United Nations and Statute of the International Court of Justice." They are two parts of one system.

The era that followed—when we believed so ardently in the utility of international

[7] See State Department statement at p.2, *supra*.

[8] See note 5, *supra*.

law as a guide for how we would try to shape the world, and how we would conduct ourselves (and expect others to conduct themselves)—was also the period when bipartisanship reigned in American foreign policy.

The United States was so optimistic about international organization that we offered the atomic bomb to the U.N., when we alone in the world were a nuclear power. We fought in Korea under the U.N. flag. We saw to decolonialization, established a world bank, put a trade system into effect (not the full-fledged trade organization some contemplated, but the less formal General Agreement on Tariffs and Trade, which may have been the better idea anyway).

Bipartisanship in foreign affairs was so firmly established that at the Senate Committee on Foreign Relations, from the time professional staffs were crated (in the Legislative Reorganization Act of 1946), there was but one staff—neither Democratic nor Republican; neither majority nor minority; just the one set of professional staff members, available equally to assist and advise senators of either party. The first staff director, Francis O. Wilcox (later to be Assistant Secretary of State for International Organization Affairs), served under four chairmen; two Democrats, two Republicans.

And then of course it all went to hell. We lost faith in the future of many of the institutions we had created; especially in the General Assembly, where we had lost our majority by the middle of the 1960s. More recently, though, we seem to be giving up on something far more fundamental: the idea of international law, which the U.N. Charter merely reflected. And with it, or so it seems to me, we lost our bipartisanship.

Though they began to fade in the 1960's, it was really during the 1970's that both so thoroughly disappeared. By the end of the last decade, America had altogether forgotten that we had once even envisioned a world ruled by law.

I suppose it was due to the Vietnam experience: everything seems attributable to that; perhaps these, too, are casualties of the war. Many could not see our involvement there as lawful; others saw the pursuit of legality as the fateful commitment that had led us there in the first place. Throughout the lengthy history of our involvement in southeast Asia, as far as I know, the United States never considered taking the matter of the Communist aggression there to the U.N. or to the World Court.

I came to the Senate in January 1977, along with a new president of my own party. I arrived in a Senate very different from the one in which Vandenberg and Connally debated the U.N. Participation Act in 1946. Certainly bipartisanship was no longer a word heard very often. (Things happen in steps: it was 1971 when the first minority staff member was appointed informally at the Foreign Relations Committee; by 1977, the Senate had written into its rules that there would be two partisan staffs.)

I have now served in the Senate during two different presidencies, from as close and interested a perch as can a senator who has not been a particular favorite of either. There are not very many ways in which Presidents Carter and Reagan can be said to be similar, but they have been, to my mind, equally parties to (for having presided over) the continuing dissolution of America's commitment to international law. Both have seen their policies suffer from an accompanying divisiveness in our foreign policy deliberations, division that occurs increasingly on the basis of party, and that has become so pervasive that it becomes difficult to remember that it ever was any other way.

There are two strains to this slow but steady disengagement from the idea of law. On the one hand, there are those who do not think we are good enough for the world. On the other hand, there are some who think the world is not good enough for us. For all I know, both schools are correct. But each ignores the question of whether international law exists regardless of how erring nations may be, and regardless of which one err the most.

In the aftermath of the Vietnam experience some seem to have decided that there is no room in our foreign policy for normative considerations such as law as a basis for relations among nations. We will no longer pretend to tell the world—urge the world—how to organize itself. How far a cry from 1945, from Inauguration Day 1961!

A noteable renunciation was that of George Kennan, who said in an interview published in Encounter, in 1976:

"My main reason for advocating a gradual and qualified withdrawal from far-flung foreign involvements is that we have nothing to teach the world. We have to confess that we have not got the answers to the problems of human society in the modern age. Moreover, every society has specific qualities of its own that we in America do not understand very well; therefore I don't want to see us put in a position of taking responsibility for the affairs of people we do not understand."

Note the retreat from the idea of international toward relative standards.

The alternative perspective—I am not seeking anything here more than illustrations of these general opposites—may be found in a recent statement by my distinguished colleague from Idaho, Senator Steve Symms. In a letter to the New York Times opposing ratification of the Genocide Treaty, he writes:

"If an international penal tribunal is established, you can expect it to be as anti-American and anti-Israel as the World Court and the U.N. are today."

That the U.N. may be so characterized is surely a defensible position. But the Court? I do not know any action by the Court that could be described as "anti-American." It stood solidly with us after the seizure of our embassy in Iran; a Special Chamber handed down a major decision settling the Gulf of Maine dispute between United States and Canada to our mutual satisfaction.

But there is a contrary perception, and in the Senate it is widespread and deeply felt.

In 1979 I took these musings to the Council on Foreign Relations. I put the matter as simply as I could in an address at the Harold Pratt House. It seemed to me, I said:

"That the United States has moved . . . away from an earlier conception of a world order, which if arguable was nonetheless coherent, and not replaced it with any other conception. No normative conception, that is. If we don't believe in law, then what do we believe in?"

Increasingly, it seems that we are settling into a normless Realpolitik that ignores law, demolishes consensus, embarrasses the United States abroad—and makes it difficult for our friends and allies to join us when we need them.

Central America provides an illustration. The United States recently imposed an economic boycott on Nicaragua for reasons we consider sufficient, and appropriate under law. Yet none of our allies has joined us, nor indeed any friendly nation. A great range of concerns could explain this abstention, but I dare to think that one factor is that our conduct towards Nicaragua is not seen as sufficiently informed by consideration of law.

That is a convolute statement, but which is a convolute situation. Let me suggest that the legislative record establishes a clear determination by Congress that we should keep well within the confines of law in our dealing with Nicaragua, and that we could do just that.

On November 18, 1983 it fell to me as Vice Chairman of the Senate Select Committee on Intelligence to bring to the floor of the Senate (Senator Goldwater being necessarily absent) the report of the Conference Committee on the Intelligence Authorization Act for fiscal year 1984. This was the bill agreed to by the House-Senate conferees, and was promptly enacted by both bodies and became law. It was the last time the Committee would propose and Congress authorized a bipartisan aid measure for the "contras." At the risk of being tedious, but because it appears to me that this record is not sufficiently known, let me cite my remarks that day.

As I noted on the floor the day the Senate passed the Intelligence Authorization Act (November 3), the distance between the House and the Senate was not as large as many might have thought. Both committees understood the Government of Nicaragua to be in violation of international law. This was recognized by an express finding in the Intelligence Authorization bill passed by the House. The finding states:

By providing military support (including arms, training and logistical command and control, and communications facilities) to groups seeking to overthrow the government of El Salvador and other Central American governments, the Government of National Reconstruction of Nicaragua has violated article 18 of the Charter of the Organization of American States which declares that no state has the right to intervene directly or indirectly, for any reason whatsoever, in the internal or external affairs of any other state.

The United States, in upholding these covenants, has a duty to respond to these violations of law. Our response, however, must be both proportional and prudent.

With such standards in mind, it was the Senate committee's judgment that the means chosen by the House to halt these violations—fences, radar planes, and so forth—would be ineffective and present an unacceptably high risk to U.S. forces who would almost surely become involved in putting such arrangements in place. On the other hand, it was also the committee's judgment that the previous finding had been too broad and not sufficiently specific with respect to the program's goals.

Along with my colleagues, I pressed the administration to redefine its covert program to assure that it was in accord with our obligations under international law. I believe the new Presidential finding reflects this counsel. Thus, the goal with this program is as it should be—to bring the Government of Nicaragua into conformity with accepted norms of international behavior.

(John Norton Moore, who invited me to speak to you today, wrote in Foreign Affairs some years ago about the "misleading image of law as a system of negative restraint." It is much the vogue in Washington these days to say this business of law is for weaklings. But of course it need not be a restraint only on the law-abiding; it provides a structure for organizing action, for responding to violations of the law. A commitment to law ought not to be understood as a commit-

ment never to use force. Domestic analogies are valid here. A commitment to law is precisely the basis on which law enforcement agencies use force, and often a great deal of force. And the fact that a great many persons do not abide by the law only increases the necessity of force—as an instrument of law.

That is where the bipartisan support in Congress for the administration's Central America policy broke. Recall that the Senate passed the Intelligence Authorization Act to which I have referred on November 18, 1983. Some eight or nine or ten weeks later, using funds authorized by that Act with its specific statutory language regarding international law, the United States government commenced secretly to mine certain harbors in Nicaragua. I am not here to argue either the merits or the legality of the act. I simply cite our concern for legality, and the fact that when the mining became known—to the Intelligence Committees and to the public—Senator Goldwater wrote to the Director of the CIA stating that "this is an act violating international law".

Is it too much to claim from this record that the Congress was concerned and the executive either didn't understand or didn't think it mattered? This seems to me to reflect the erosion of our awareness of international law which began to concern me in the late 1970's.

The Administration was evidently stunned to learn in April last year that Nicaragua was planning to go to the World Court to complain about the CIA mining of its harbors. (One hears that the Sandinistas were planning to go to the Court anyway, and simply added the mining charge. But we had helped them to make a seemingly better case.)

The State Department thereupon cobbled together a series of evasions and avoidances, and announced that the U.S. would not accept the compulsory jurisdiction of that court with respect to "any dispute with any Central American state" for two years. No one seemed to know or wish to acknowledge that when the U.S. accepted the complusory jurisdiction of the Court in 1946, we explicitly committed ourselves, by the six month notice provision not to do precisely what the Administration now sought, which was to evade the jurisdiction of the court when a suit was about to be filed against us.

The U.S. argued at The Hague that we were not bound to reply to Nicaragua. The Court considered this and ruled, on November 24, 1984—by vote of 16 to 0—that Nicaragua's claims were admissible, according to the terms of the acceptance the U.S. had originally filed with the Court.

In January, as the Court was drafting the terms and timetable according to which it would hear the merits of Nicaragua's complaint against the U.S., the Administration announced that it would simply not participate further. That we would do, in effect, what Iran had done in the hostage case.

As he was bound to do, the President of the Court, on January 22 issued an Order outlining a timetable for the proceedings of the case ". . . on the merits":

The time limits fixed are as follows: 30 April 1985 for the Memorial of the Republic of Nicaragua; 31 May 1985 for the Counter-Memorial of the United States of America. Oral arguments will be scheduled for later in the year. The United States does not plan to participate.

The policy seems to me to risk assuming a position of moral equivalence with those very nations who are least abiding of international law. The idea has been summed up by one of the architects of the Administration policy in a recent op-ed in the Wall Street Journal titled "Why Bow to the World Court When F... [illegible]"

This is a long way from the position of political leadership the United States assumed for itself 40 years ago. Are we now to be content to measure the acceptibility of our policies according to whether they are equally acceptable to the likes of the Soviet Union, or Iran. Or Nicaragua.

I would hope not. But most of all I would hope that we not lose the sense that our national interests reside in upholding a regime of law in international affairs. Jon Van Dyke has recently written that the scuttling of the law of the sea pact jeopardizes U.S. passage through strategic straits, and sends up a flare signaling American reluctance to participate in multinational resolution of disputes.

I tend to agree. At minimum it seems to me this question needs to be addressed. I have enough of the Navy left in me to think it a matter of great consequence whether the right of free passage in the narrows of the ocean seas is recognized and upheld. Of course there is the separate and troublesome issue of mineral and mining rights. But need we simply withdraw from the process?

Are we to be content with this posture?

The American Society of International Law has involved itself. Responding to the U.S. announcement of refusal to participate in the Court proceedings, the Society has adopted only the second "political" resolution in its 80-year existence.

I quote a portion of that resolution: The Society . . . deplores, and strongly favors rescission of, the recent action of the United States Government in attempting to withdraw from the jurisdiction of the International Court of Justice "disputes with any Central American state."

Can the American Bar Association help encourage a greater sensitivity to considerations of law, too?

I believe it is the only way back to a consensus approach to foreign policy—a bipartisan approach to foreign affairs, if you will.

To the degree that law—the Law of the Charter included—is seen to be, and is, the basis of our international conduct, a bipartisan foreign policy does not require a party out of office to agree with policies of the party in power, but rather simply to agree with the principles of law on which those policies are based. Principles prior, as you might say, to whatever is the present emergency, the incumbent president, the prospects for the next election. The same principle applies to allied and non-aligned nations, who can for more readily support (or at least accept) American policies if our conduct is seen to be based on law that binds them as well as us.

It also encourages, I dare say, a certain litigiousness to which the American bar is especially suited or at least much inclined. It would seem to me that we should welcome the chance to meet Nicaragua in Court. It would be our kind of forum. And there is lots we have to talk about. How I would love to see William P. Rogers at The Hague leading an American team of international lawyers—John Norton Moore, Alfred P. Rubin, L.F.E. Goldie. With plain instructions, from the Secretary of State to the former: "Win."

It may be too late (31 May 1985 is a week from tomorrow), but there are signs that our recent losing streak has not been universally approved. Not long ago our respected Secretary of State, George P. Shultz, announced that he had asked Federal District Court Judge Abraham D. Sofaer to leave the bench in the Southern District of New York to become the Legal Adviser to the Department of State. I had the honor to [illegible] Judge Sofaer's appointment to the Judiciary in the first instance and, much as he will be missed in New York, he will certainly be welcome in Washington.

Just a month ago I addressed the annual meeting of the American Society of International Law, and spoke to the more general question of our continued adherence to those ideas which seemed so settled a generation ago, and even more so three generations ago. The law is there, I said. In 1900 the Supreme Court put the matter plainly enough in Pacquette Habana: "International law is part of our law. . ." It does not cease to become law because it is disobeyed, nor yet if it has been forgotten. To conservatives and liberal alike, ignorance of the law is no excuse.

Now clearly the World Court is no longer an ideal instrument for the adjudication of law. As I count, some nine of its fifteen members come from countries where there is an independent judiciary and a secure legal system. As this is true for perhaps a third, at most half of the members of the United Nations, we may judge that the Court is not all that imbalanced. Still, obviously, we cannot accept that legal judgment will be passed on us by persons who, whatever their individual dispositions, come from and unavoidably represent societies where legality has a wholly different meaning from that which we assume. We have to think of new terms of submission to the court's jurisdiction. The Court's statute provides for Special Chambers, wherein the parties to the dispute pick the judges: a viable arrangement. Obviously however we cannot indefinitely prolong the situation which Nicaragua is now exploiting, which is to say that of a near-as-makes-no-matter Marxist-Leninist regime dragging the United States before the world tribunal, with the United States unprepared, unwilling, almost uncomprehending. There is a remedy for this, however. It is called, attention, and that is what I hope the subject will receive.

TO PRESIDENT REAGAN'S HEALTH

Mr. MOYNIHAN. Mr. President, may I note that we learn in this morning's press that the President will undergo a minor surgical operation shortly, and say that this Senator would only wish him well. To his family I would say that we have every confidence that if there ever was an indestructible President it is Ronald Reagan. Nevertheless we wish him a cheerful encounter with what is always a difficult event. He has shown his surpassing qualities in these matters more often than I need mention. I wish him well even so.

ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of routine morning business not to extend beyond the hour of 11 a.m., with statements therein limited to 5 minutes each.

IT IS TIME FOR THE DEMOCRATS TO BE TOUGH-MINDED

Mr. MOYNIHAN. Mr. President, on June 20, the New York Times published an op-ed column entitled "It Is